

Sales of products of photofinishing are considered sales of tangible personal property rather than sales of service. (This is a GIL.)

April 21, 2008

Dear Xxxxx:

This letter is in response to your letter dated March 3, 2007, in which you request information. We apologize for the delay in responding to your inquiry. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Enclosed please find a completed form ST-1 for photography sales receipts 2007.

I also would like to take this opportunity to request clarification on whether receipts for my photography sales are taxable under the Illinois Retail Tax Code. I have engaged in two forms of photography sales described as follows:

Sales of Prints: In 2003, I engaged in retail sales of printed and matted photography at several weekend craft shows or specialty events at which I rented a table as a 'storefront.' Because these seemed to qualify as retail sales of 'hard merchandise' I applied for a state retailer tax number, sales of prints were reported in forms ST-1 filed for that year, and appropriate taxes were paid. I have not sold prints since 2003.

Stock Image Sales: Since 2003, I have also sold one-time use of stock images for which I use copyright, and for which I also keep and maintain the original images either on film or as digital files. For example, clients contact me asking for use of a specific image (e.g., for use in magazines, text books, web page use, or other graphic media). Once terms of use and a fee are agreed upon I provide either loan of the original film, or I transfer a digitized copy. The client then is free to reproduce the image one time in their media, as agreed, but then must return the original film or digitized image file to me when they are finished reproducing it. I inquired about this by phone call to the Illinois Department of Revenue, and was informed that this qualifies as a retail sale. Since

then, I have included receipts for stock image sales on my form ST-1, and paid tax on these since 2003.

Recently a fellow photographer/colleague who also engages in stock image and print sales told me that: (1) sales of prints are not taxable because they are 'graphic arts' and (2) stock photography sales do not qualify as taxable retail sales, but are instead images provided as a service to a client.

Based on this, please clarify if either or both of the types of sales explained above are subject to retail sales tax in Illinois. While I engage in photography-related sales, photography is only a part-time hobby for me, and one that rarely earns much more than enough to cover my out of pocket expenses.

Thank you for considering my request. If you have any questions, please do not hesitate to contact me at the phone number listed above.

DEPARTMENT'S RESPONSE

The Illinois Retailers' Occupation Tax Act imposes a tax upon "persons engaged in the business of selling at retail tangible personal property, including computer software, and including photographs, negatives, and positives that are the product of photoprocessing, but not including products of photoprocessing produced for use in motion pictures for public commercial exhibition." 35 ILCS 120/2.

If you are selling photographs, whether at art fairs or elsewhere in Illinois, you are "engaged in the business of selling at retail" and, thus, incur Retailers' Occupation (i.e., Sales Tax) liability on your gross receipts from such sales. See 86 Ill. Adm. Code 130.2000 concerning Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers.

Artists who engage in selling art objects at retail should register like any other retailer, file sales tax returns and otherwise comply with the Retailers' Occupation Tax Act. Please refer to 86 Ill. Adm. Code 130.1910(a). However, you should not have to pay tax on items that you purchase for the purpose of resale, so long as you give your vendor a certificate of resale that contains the information required by 86 Ill. Adm. Code 130.1410.

On the other hand, if you give your customer a "license" to use a photographic image in a specific number of situations or for a specified frequency, and the customer is required to return the photograph, etc. to you, there would be no sale at retail and no tax upon the receipts received from your customer. However, you as the user, would owe tax on the purchase of the film and the price charged on the development of the photograph, etc. when it is done by an outside photoprocessing laboratory. When you do the photoprocessing in-house, you would also owe tax on the sensitized paper, and any other tangible personal property that is physically incorporated into the product of photoprocessing.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Debra M. Boggess
Associate Counsel

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